

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1903 (PCB BR 05-03) Public Records Exemption
SPONSOR(S): Business Regulation Committee and Representative Attkisson
TIED BILLS: HB 1901 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Business Regulation Committee	15 Y, 0 N	Morris	Liepshutz
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill creates an exemption from public records for nonessential private information supplied by applicants pursuant to an application filed for the purpose of securing a license as a slot machine licensee and for trade secrets disclosed by any entity during the licensing process.

The bill will have no impact on state revenue collections or expenditures.

This legislation will take effect on the same day that PCB BR 05-01, or similar legislation, takes effect.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any House principle.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Article I, s. 24(a) of the State Constitution provides that:

“Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.”

Florida’s public records law¹ also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

“...all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used “to perpetuate, communicate, or formalize knowledge.”² Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.³

Under Article I, s. 24(c) of the State Constitution, the Legislature may provide for the exemption of records from the open government requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for public-records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption.

¹ Chapter 119, F.S.

² See *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

³ See *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla 1979).

Article X, Section 23 - Slot Machine Gaming

Amendment 4 to the State Constitution was approved by the voters at the November 2004 General Election and the election results were formally certified by the Elections Canvassing Commission on November 14, 2004.

Passage of Amendment 4 authorized the governing bodies of Broward and Miami-Dade Counties to hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed pari-mutuel facilities that have conducted live racing or games in that county during each of the last two calendar years before the effective date of the Constitutional Amendment [2002 and 2003].

Article X, Section 23, Florida Constitution reads as follows:

SECTION 23. Slot machines.--

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

Both Broward and Miami-Dade Counties held local referendums on whether to authorize slot machines in their respective counties on March 8, 2005. Voters in Broward County approved the measure while voters in Miami-Dade County voted against authorizing slot machines at pari-mutuel facilities in that county. Pursuant to constitutional authority, electors in Miami-Dade County may vote on this issue again after two years of the initial vote.

Effect of Proposed Legislation

Proposed legislation implementing a regulatory and taxation structure for slot machine gambling requires the submission of personal and private information which, if released, could be defamatory to such individuals or cause unwarranted damage to the name or reputation of such individuals or jeopardize the safety of such individuals. In addition, the proposed legislation requires the submission of information of a confidential nature which is used to protect or further a business advantage and other trade secrets, the disclosure of which could injure the affected entity in the marketplace. This bill creates an exemption from public records for nonessential private information supplied by applicants

pursuant to an application filed for the purpose of securing a license as a slot machine licensee and for trade secrets supplied by any entity for licensing purposes.

This legislation will take effect on the same day that PCB BR 05-01, or similar legislation, takes effect.

C. SECTION DIRECTORY:

Section 1. Creates s. 551.1078, F.S., to provide a public records exemption for specified information.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date that is contingent upon the passage of PCB BR 05-01 or substantially similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, Section 24(a) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records exemption. This bill will require a two-thirds vote for passage.

Representatives of the First Amendment Foundation, the Florida Press Association and the Society of Newspaper Editors have expressed a concern that provisions of this legislation fail to provide a substantive justification for the proposed exemption and is unconstitutionally vague.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

See CONSTITUTIONAL ISSUES statement above.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES